

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: Squad #5	CCRB Case #: 201902812	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/14/2019 5:17 PM	Location of Incident: inside of § 87(2)(b)	Precinct: 41	18 Mo. SOL 9/14/2020	EO SOL 5/1/2021	
Date/Time CV Reported Mon, 04/01/2019 4:17 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 04/01/2019 4:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Damien Banks	24355	933630	ESS 03
3. POM Jose Nunez	10800	957905	050 PCT
4. POM Jonathan Pagan	03338	961989	041 PCT
5. POM Michael Mcinnis	18730	940454	ESS 03
6. SGT Dawin Vanderpool	03324	955617	040 PCT
7. An officer			

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Pagan	Discourtesy: Police Officer Jonathan Pagan spoke discourteously to § 87(2)(b)	
B.POM Jonathan Pagan	Force: Police Officer Jonathan Pagan pointed his gun at § 87(2)(b)	
C.POM Jose Nunez	Abuse: Police Officer Jose Nunez threatened § 87(2)(b) with the use of force.	
D. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon his perceived mental disability.	
E. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
F.POM Michael Mcinnis	Abuse: Police Officer Michael Mcinnis entered § 87(2)(b) in the Bronx.	
G.POM Damien Banks	Abuse: Police Officer Damien Banks entered § 87(2)(b) in the Bronx.	
H. Officers	Abuse: Officers entered § 87(2)(b) in the Bronx.	
I.POM Michael Mcinnis	Force: Police Officer Michael Mcinnis used physical force against § 87(2)(b)	
J.POM Michael Mcinnis	Force: Police Officer Damien Banks used physical force against § 87(2)(b)	
K.SGT Dawin Vanderpool	Abuse: Sergeant Dawin Vanderpool forcibly removed § 87(2)(b) to the hospital.	
L. Officers	Abuse: Officers searched § 87(2)(b) in the Bronx.	

Case Summary

On April 1, 2019, § 87(2)(b) reported this complaint in person at the CCRB.

On March 17, 2019, at 5:17 p.m., § 87(2)(b) was inside his home, located at § 87(2)(b) in the Bronx, when officers arrived in response to a report of a robbery that § 87(2)(b) allegedly committed in a nearby laundromat. After refusing to open the door for the officers, § 87(2)(b) saw Police Officers Jonathan Pagan of the 41st Precinct and Jose Nunez of the 40th Precinct on the fire escape outside his window, where PO Pagan told § 87(2)(b) “Open the fucking door right now,” (**Allegation A: Discourtesy**, § 87(2)(g)) and pointed his gun at § 87(2)(b) (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) got onto the fire escape, where PO Nunez pointed his Taser at § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g)). An officer allegedly said, “What the fuck? This guy’s crazy. Look at him. He looks like a monster,” and called § 87(2)(b) “the devil” (**Allegation D: Offensive Language**, § 87(2)(g); **Allegation E: Discourtesy**, § 87(2)(g)). Police Officers Michael Mcinnis, Damien Banks, and other officers of the Emergency Services Unit entered the apartment (**Allegations F & H: Abuse of Authority**, § 87(2)(g); **Allegation G: Abuse of Authority**, § 87(2)(g)). PO Mcinnis brought § 87(2)(b) to the ground (**Allegation I: Force**, § 87(2)(g)) and then allegedly stepped on § 87(2)(b)’s back, crushing his left middle finger which was between his chest and the ground (**Allegation J: Force**, § 87(2)(g)). Sergeant Dawin Vanderpool of the 40th Precinct removed § 87(2)(b) to the hospital (**Allegation K: Abuse of Authority**, § 87(2)(g)). When § 87(2)(b) returned to his apartment, he found some of his belongings out of place, causing him to believe that officers searched his apartment (**Allegation L: Abuse of Authority**, § 87(2)(g)).

On June 4, 2019, this case was reassigned from Inv. Daniel Gavin to Inv. Andrew Ridge following Inv. Gavin’s departure from the CCRB. The case was reassigned to IM Daniel Giansante following Inv. Ridge’s departure from the CCRB on July 17, 2020.

The investigation obtained BWC footage from PO Ramirez (four clips), PO Poliard (four clips), PO Pagan (four clips), PO Jaffrey (three clips), PO Kreyziu (two clips), and PO Cruz (two clips) (BR01-19). All references to video evidence below refer to the time stamp in the video player, not the on-screen clock embedded in the video itself.

PO Nunez ultimately arrested § 87(2)(b) for § 87(2)(b) (BR20).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jonathan Pagan spoke discourteously to § 87(2)(b)

Allegation (B) Force: Police Officer Jonathan Pagan pointed his gun at § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Jose Nunez threatened § 87(2)(b) with the use of force.

Allegation (D) Offensive Language: An officer made remarks to § 87(2)(b) based upon his perceived mental disability.

Allegation (E) Discourtesy: An officer spoke discourteously to § 87(2)(b)

It is undisputed that officers initially asked § 87(2)(b) to open his apartment door and he refused. PO Pagan and PO Nunez climbed onto the fire escape outside § 87(2)(b)’s window and

told him to open the door. In response, § 87(2)(b) climbed out of the window onto the fire escape.

In his CCRB testimony, § 87(2)(b) did not recount his actions prior to the incident, aside from a meeting with his building manager (BR21). He recounted that the officers on the fire escape were attempting to open his window from the outside, and one of them said, “What the fuck? This guy’s crazy. Look at him. He looks like a monster.” § 87(2)(b) did not know which officer said this and believed that this officer was commenting on his muscles when calling him a “monster.” § 87(2)(b) cursed at the officers and exited through his window onto the fire escape. PO Pagan drew his gun and pointed it at § 87(2)(b) and PO Nunez did the same with his Taser. § 87(2)(b) promised to open his door and re-entered his apartment while PO Pagan and PO Nunez withdrew. § 87(2)(b) heard one of the officers say that he looked like “the devil,” but § 87(2)(b) did not know which of the officers said this.

PO Pagan recounted that he arrived at § 87(2)(b)’s building in response to a report of a robbery (BR22). The victim told PO Pagan that the perpetrator fled to § 87(2)(b)’s apartment. PO Pagan and PO Nunez climbed onto the fire escape because § 87(2)(b) refused to comply with the officers’ instruction to open the apartment door. The officers attempted to calm § 87(2)(b) by telling him that they just wanted to talk to him. PO Pagan stood close to § 87(2)(b)’s window, which was caged and closed, but he could not see inside. At one point, § 87(2)(b) came towards the window from inside his apartment. PO Pagan told § 87(2)(b) to “open the fucking door” in order to get him to comply with the officers’ instructions to open the door. Aside from this statement, PO Pagan did not hear any other officers use profanity while on the fire escape. At one point after being told to open the door, § 87(2)(b) said, “I got something for you,” before moving back deeper into the apartment. It was dark in the apartment, so PO Pagan could not see where within the apartment § 87(2)(b) went after making this statement. After § 87(2)(b) made this statement, PO Pagan drew his firearm and pointed it at the window because he was scared, did not know what § 87(2)(b) meant by this statement, and thought that by saying this § 87(2)(b) may have been indicating that he had a gun. PO Pagan had his gun drawn for a minute before holstering it. PO Pagan holstered his gun after this period of time because he saw that § 87(2)(b) was not doing anything. Around the same time, PO Nunez drew his Taser and kept it drawn for five minutes. Towards the end of the interaction, § 87(2)(b) opened the window and went onto the fire escape. The officers told § 87(2)(b) to go back inside the apartment and he eventually complied. PO Pagan denied that anyone said, “What the fuck. This guy is crazy,” or that anyone called him a “monster” or “the devil.”

PO Pagan’s BWC videos capture the officers’ interactions with § 87(2)(b) on the fire escape (BR09-12). In PO Pagan’s second BWC clip, at 14:56, PO Pagan says, “Open the door. Open the fucking door right now” (BR10). § 87(2)(b) refuses to do so and tells the officers that they are “fucking crazy.” At 21:26, PO Pagan’s gun becomes visible in his right hand. At 22:17, PO Pagan appears to holster his gun. At 25:18, PO Pagan says that § 87(2)(b) is opening “it,” presumably referring to the apartment window. At 25:23, PO Nunez’s Taser, which is drawn, becomes visible. It is unclear from the video precisely when PO Nunez draws his Taser and when he holsters it. At no point during the video can § 87(2)(b) be heard saying, “I got something for you.” When questioned about this during his CCRB interview as he was presented with his BWC

video footage, PO Pagan recounted that this threat is not audible in the video and believed that it could not be heard because § 87(2)(b) used a low voice to say it. PO Pagan's third BWC video captures Sgt. Vanderpool speaking with § 87(2)(b) at the door to his apartment later during the incident. At 03:31, § 87(2)(b) says he is "not gonna shoot," and claims that he has a gun. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Nunez's testimony regarding these allegations was consistent with that provided by PO Pagan aside from the following exceptions: PO Nunez could not recall if anyone told § 87(2)(b) to "open the fucking door" (BR23). PO Nunez could not recall if § 87(2)(b) made any threats, indicated that he had a weapon, or if PO Pagan drew his gun on the fire escape. PO Nunez could not recall if he drew his Taser, and could not recall if anyone said, "What the fuck. This guy is crazy," or if anyone called him a "monster" or "the devil." PO Nunez did not capture any BWC footage of the incident, but when presented with PO Pagan's BWC video footage which captures PO Nunez drawing his Taser, PO Nunez recounted that having watched the video he could still not independently recall drawing his Taser or PO Pagan pointing his gun at the window.

None of the BWC videos capture anyone saying, "What the fuck. This guy is crazy," or anyone calling § 87(2)(b) a "monster" or "the devil." § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

A Deferral to Prosecute memorandum from the Bronx District Attorney's office notes a narrative consistent with that provided by PO Pagan and PO Nunez, although it also notes § 87(2)(b)'s threat to shoot as captured by PO Pagan's third BWC video (BR27).

NYPD Patrol Guide Procedure 203-09 states that members of the service must "be courteous and respectful" (BR24).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

According to NYPD Patrol Guide Procedure 221-01, officers may use force to ensure safety, to protect human life, or when it is necessary to place a person in custody (BR25). In all cases, any application of force must be reasonable given the circumstances. Further, this procedure notes that the decision to draw and point a firearm should be based on the articulable belief that the potential for serious physical injury is present.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

NYPD Patrol Guide Procedure 221-02 states that officers must “apply no more than the reasonable force necessary to gain control” in police incidents (BR26). § 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Michael Mcinnis entered § 87(2)(b) in the Bronx.

Allegation (G) Abuse of Authority: Police Officer Damien Banks entered § 87(2)(b) in the Bronx.

Allegation (H) Abuse of Authority: Officers entered § 87(2)(b) in the Bronx.

Allegation (I) Force: Police Officer Michael Mcinnis used physical force against § 87(2)(b)

Allegation (J) Force: Police Officer Michael Mcinnis used physical force against § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Dawin Vanderpool forcibly removed § 87(2)(b) to the hospital.

It is undisputed that Sgt. Vanderpool called ESU to the scene to have § 87(2)(b) removed from the apartment, that ESU officers entered the apartment, that PO Mcinnis brought § 87(2)(b) to the ground directly after entering the apartment, and that § 87(2)(b) was removed to § 87(2)(b) in the Bronx.

§ 87(2)(b) recounted that when PO Mcinnis brought him to the ground, PO Mcinnis placed his shield on § 87(2)(b)'s back and stepped on the shield to keep it in place. § 87(2)(b)'s left hand was positioned between his body and the ground. As a result of PO Mcinnis stepping on his back, the middle finger on § 87(2)(b)'s left hand was crushed between his body and the floor. § 87(2)(b) said, “My hand is injured. Get off of me.” After this, officers handcuffed § 87(2)(b) and brought him to an ambulance.

The Prehospital Care Report Summary prepared for § 87(2)(b) indicated that he claimed he had a gun when he barricaded himself in the apartment and that the EMTs observed no injuries on him (BR28). The medical records from § 87(2)(b)'s stay at § 87(2)(b) from § 87(2)(b), into § 87(2)(b), indicated that the NYPD removed § 87(2)(b) to the hospital as an EDP in their custody (BR29). § 87(2)(b) complained of pain in both of his hands from the handcuffs but made no other medical complaint. The records noted that § 87(2)(b) suffered from ecchymosis, which is the discoloration of skin from internal bleeding that often results from bruising, on his right [sic] middle finger from an accident that occurred over a year before this incident, and that this did not require acute medical intervention. § 87(2)(b) was diagnosed with right finger pain and was ultimately discharged after a psychological evaluation.

Later on § 87(2)(b), EMTs brought § 87(2)(b) back to § 87(2)(b) because he reported pain to his left middle finger while still in police custody. The Prehospital

Care Report Summary indicates § 87(2)(b) reported that he believed he sustained the bruising to his left middle finger eight months before the incident with PO Mcinnis. The medical records from § 87(2)(b)'s re-admission to the hospital that day indicate that EMTs brought him back for a psychiatric evaluation because he again became agitated and that the only injury to his left hand was a small scab to his left index [*sic*] finger. The physician noted, "There was some question about whether he sustained another injury after leaving to one of his fingers but no injuries appreciable. Police deny there was any report of physical altercation, trauma, or injury to hand. Patient denies any altercation as well."

In a visit to § 87(2)(b) on § 87(2)(b), § 87(2)(b) reported pain to his finger from an altercation with officers a week or two before and was ultimately diagnosed with gangrene to his left middle finger (BR30). This diagnosis resulted in the amputation of § 87(2)(b)'s left middle finger on § 87(2)(b).

PO Mcinnis recounted that after Sgt. Vanderpool called him, PO Banks, and other ESU officers to the scene, he spoke with § 87(2)(b) through the closed door (BR31). § 87(2)(b) yelled and spoke about many things without focus, including about how he used to be a police officer in the 33rd Precinct. PO Mcinnis believed that § 87(2)(b) was "a little bit delusional" because PO Mcinnis had also worked from this command and knew that § 87(2)(b) had never been employed there. Eventually, § 87(2)(b) opened the door and PO Mcinnis, PO Banks, and the other ESU officers entered. PO Mcinnis entered the apartment to secure § 87(2)(b) who was wanted for robbery, and because he might a danger to himself since he was making statements that did not make sense. While an officer whom PO Mcinnis could not name grabbed § 87(2)(b)'s arms, PO Mcinnis pushed his bunker against the front and side part of § 87(2)(b)'s body such that § 87(2)(b)'s back made contact with the nearby wall. PO Mcinnis told § 87(2)(b) to get on the ground. § 87(2)(b) slumped along the wall to the ground, partly of his own volition and partly as a result of PO Mcinnis pushing him against the wall with his shield. PO Mcinnis brought § 87(2)(b) to the floor so that he could be placed in handcuffs. PO Mcinnis believed that PO Banks immediately placed § 87(2)(b) in handcuffs once he reached the floor. PO Mcinnis could not remember how § 87(2)(b) was positioned after he reached the ground, but he specified that § 87(2)(b) was compliant in being placed in handcuffs and that his hands were "behind him" at this time. PO Mcinnis could not remember if § 87(2)(b) ever concealed his hands. PO Mcinnis denied that anyone ever placed a shield on § 87(2)(b) that anyone stepped on § 87(2)(b) or that § 87(2)(b) complained of any injuries. PO Mcinnis did not prepare a TRI for bringing § 87(2)(b) to the floor because he used such minimal force to do so.

The medical records from both of § 87(2)(b)'s visits to the hospital in the 24 hours after the incident indicated no injury to his left middle finger. In the diagnosis of the injury to his right middle finger, the medical professional noted that this injury had been sustained over a year before the incident. In § 87(2)(b)'s claim of an injury to his left middle finger during his later visit to the hospital, he stated that he had sustained this many months before his interaction with the officers. § 87(2)(g)

Aside from PO Banks, the investigation was unable to identify the other ESU officers who entered the apartment.

Sgt. Vanderpool, PO Pagan, and PO Nunez did not witness the entry into § 87(2)(b)'s apartment or his apprehension because ESU had all patrol officers leave the direct vicinity of § 87(2)(b)'s apartment. None of the BWC video footage obtained by the investigation clearly captures the entry into § 87(2)(b)'s apartment and his apprehension.

PO Nunez recounted that he never suspected § 87(2)(b) of being an EDP. However, PO Nunez prepared an AIDED report for § 87(2)(b) because he believed that an officer must do so when one removes a subject to the hospital, even if that subject is in police custody, as was the case in this incident. The AIDED report, which was prepared around the time of the incident, indicated that § 87(2)(b) was an EDP and that he did not sustain any injuries during the incident (BR32). A Medical Treatment of Prisoner Report, prepared by PO Malik several hours later, noted that § 87(2)(b) was removed to the hospital for a psychiatric evaluation (BR33).

PO Pagan recounted that earlier during the incident, when § 87(2)(b) put half his body outside his apartment window and onto the fire escape, he said, “Oh. You guys are leaving. Oh. You guys want to be superman,” and placed a superman toy onto the fire escape.

Sgt. Vanderpool recounted that upon his arrival on scene, PO Nunez informed him that § 87(2)(b) had become “emotionally disturbed” on the fire escape when he began to hit the metal partition between his window and the fire escape (BR34). Sgt. Vanderpool could not remember PO Nunez telling him anything else that the subject did at the fire escape. Sgt. Vanderpool tried to get § 87(2)(b) to come to the door to speak with the officers, but § 87(2)(b) did not open the door. From the beginning of his conversation with Sgt. Vanderpool, § 87(2)(b) screamed and yelled. Sgt. Vanderpool could not remember what § 87(2)(b) said when he screamed and yelled beyond that whatever § 87(2)(b) said caused him to believe that § 87(2)(b) might be an EDP. At one point, § 87(2)(b) said that if all the officers lined up in the middle of the hallway facing his door he “won’t shoot.” Sgt. Vanderpool did not understand what § 87(2)(b) meant by making this statement. Sgt. Vanderpool could not remember there being anything else that indicated to him that § 87(2)(b) was an EDP. Shortly after his arrival on scene, Sgt. Vanderpool requested ESU to remove § 87(2)(b) from the apartment. Sgt. Vanderpool could not remember if he called for ESU before or after § 87(2)(b) made the statement about how he “won’t shoot.” After the ESU officers apprehended § 87(2)(b) EMS removed him to § 87(2)(b). Sgt. Vanderpool could not recall requesting that EMS come to the location or who did this, nor could he remember when they arrived. When asked who made the decision to have § 87(2)(b) removed to the hospital, Sgt. Vanderpool responded that “EMS interviews on the scene and they determine if they remove or not.”

Although Sgt. Vanderpool did not capture BWC video footage of the incident, PO Pagan’s third BWC video captures Sgt. Vanderpool speaking with § 87(2)(b) at the door to his apartment. At 03:31, § 87(2)(b) says he is “not gonna shoot.” At 03:36, Sgt. Vanderpool asks § 87(2)(b) if he has a gun and § 87(2)(b) replies that he does.

People v. Greenleaf, 222 A.D.2d 838 (1995) outlines three requirements to justify an entry based on the emergency exception to the warrant requirement: (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched (BR35).

In Brigham City v. Stuart, 547 U.S. 398 (2006), the Supreme Court of the United States overturned the second requirement of People v. Greenleaf (BR36).

§ 87(2)(g)

§ 87(2)(g)

The CTS Officer ID Tool indicated that PO Banks has left service. A request sent to DAO indicated that PO Banks resigned on January 20, 2020 (BR37). § 87(2)(g)

NYPD Patrol Guide Procedure 221-02 states that officers must “apply no more than the reasonable force necessary to gain control” in police incidents.

§ 87(2)(g)

§ 87(2)(g)

NYPD Patrol Guide Procedure 221-13 outlines the following: “An emotionally disturbed person (EDP) is someone who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. An EDP may be taken into protective custody when he is conducting himself in a manner likely to result in serious injury to himself or others (BR38).”

§ 87(2)(g)

Allegation (L) Abuse of Authority: Officers searched § 87(2)(b) in the Bronx.

§ 87(2)(b) recounted that when he returned to this apartment, he noticed that the door to his bedroom closet was open, that clothes were on the floor, and that his old handcuffs, his equipment belt, security officer uniform, and community safety patrol uniform had been moved from outside the closet. § 87(2)(b) initially recounted that he saw an officer go inside his bedroom. However, § 87(2)(b) later recounted that although he never saw officers enter his

bedroom, he believed that they were responsible for moving these items since no one else had access to his apartment.

PO Mcinnis denied that officers searched the apartment, PO Pagan did not know if any such search took place, and PO Nunez and Sgt. Vanderpool did not learn of anyone searching the apartment.

None of the BWC video footage captured a search of the apartment.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one CCRB complaint and has been named as a victim in three allegations (BR39):
 - § 87(2)(b)
- PO Pagan has been a member of service for three years and has been a subject in two CCRB complaints and five allegations, none of which was substantiated. § 87(2)(g)
- PO Nunez has been a member of service for five years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Mcinnis has been a member of service for 14 years and has been a subject in one CCRB complaint and six allegations, none of which was substantiated. § 87(2)(g)
- Sgt. Vanderpool has been a member of service for six years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On March 4, 2020, the undersigned requested any Notice of Claim filed regarding this incident from the NYC Comptroller. The response will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c)

Squad No.: 5

Investigator: _____

Date _____

Reviewer: _____

Signature Print Title & Name Date